

AMENDED IN SENATE APRIL 21, 2014

AMENDED IN SENATE APRIL 2, 2014

SENATE BILL

No. 1302

Introduced by Senator Wyland

February 21, 2014

An act to ~~add Section 15657.4 to the Welfare and Institutions Code,~~
amend Section 259 of the Probate Code, relating to elder abuse.

LEGISLATIVE COUNSEL'S DIGEST

SB 1302, as amended, Wyland. Elder ~~financial~~ abuse.

Existing law imposes restrictions upon a person's or beneficiary's entitlement to the estate of a decedent who was an elder or dependent adult if the person or beneficiary has committed certain acts against the decedent, including, but not limited to, physical abuse, neglect, or financial abuse.

This bill would recast those provisions to instead provide that a person shall be deemed to have predeceased a decedent if he or she is liable for physical abuse, neglect, or financial abuse of the decedent pursuant to the Elder Abuse and Dependent Adult Civil Protection Act, or if that person has been convicted of a violation of provisions prohibiting willfully causing or permitting any elder or dependent adult to suffer, or inflicting thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causing or permitting the person or health of the elder or dependent adult to be injured, or willfully causing or permitting the elder or dependent adult to be placed in a situation in which his or her person or health is endangered, as specified, in which the decedent was the victim. The bill would provide that any person who is deemed to have predeceased the decedent shall not receive any property, damages, or

costs that are awarded to the decedent's estate whether that person's entitlement is under a will, a trust, or the laws of intestacy, nor serve as a fiduciary on behalf of the decedent's estate or trust.

~~The Elder Abuse and Dependent Adult Civil Protection Act authorizes compensatory damages and other relief for an elder or dependent adult who suffers financial abuse. The act defines financial abuse as, among other actions, taking, secreting, appropriating, obtaining, or retaining real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both.~~

~~This bill would require a court to notify the district attorney in the relevant jurisdiction of a civil judgment or settlement based on a violation of any state elder financial abuse law.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~yes-no~~. State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 259 of the Probate Code is amended to*
2 *read:*

3 259. (a) Any person shall be deemed to have predeceased a
4 decedent to the extent provided in subdivision ~~(c)~~ *where (b) if all*
5 of the following apply:

6 ~~(1) It has been proven by clear and convincing evidence that~~
7 ~~the person is liable for physical abuse, neglect, or financial abuse~~
8 ~~of the decedent, who was an elder or dependent adult.~~

9 ~~(2) The person is found to have acted in bad faith.~~

10 ~~(3) The person has been found to have been reckless, oppressive,~~
11 ~~fraudulent, or malicious in the commission of any of these acts~~
12 ~~upon the decedent.~~

13 ~~(4) The decedent, at the time those acts occurred and thereafter~~
14 ~~until the time of his or her death, has been found to have been~~
15 ~~substantially unable to manage his or her financial resources or to~~
16 ~~resist fraud or undue influence.~~

17 ~~(1) The person is liable for physical abuse, neglect, or financial~~
18 ~~abuse of the decedent pursuant to the Elder Abuse and Dependent~~
19 ~~Adult Civil Protection Act (Chapter 11 (commencing with Section~~
20 ~~15600) of Part 3 of Division 9 of the Welfare and Institutions~~
21 ~~Code).~~

22 ~~(2) The person has been convicted of a violation of Section 368~~
23 ~~of the Penal Code in which the decedent was the victim.~~

(b) Any person ~~shall be deemed to have predeceased a decedent to the extent provided in subdivision (a) if that person has been convicted of a violation of Section 236 of the Penal Code or any offense described in Section 368 of the Penal Code.~~ (a) *shall not do either of the following:*

(e) ~~Any person found liable under subdivision (a) or convicted under subdivision (b) shall not (1) receive~~

(1) *Receive* any property, damages, or costs that are awarded to the decedent's estate in an action described in subdivision (a) ~~or (b), whether that person's entitlement is under a will, a trust, or the laws of intestacy; or (2) serve as a fiduciary as defined in Section 39, if the instrument nominating or appointing that person was executed during the period when the decedent was substantially unable to manage his or her financial resources or resist fraud or undue influence. This section shall not apply to a decedent who, at any time following the act or acts described in paragraph (1) of subdivision (a), or the act or acts described in subdivision (b), was substantially able to manage his or her financial resources and to resist fraud or undue influence within the meaning of subdivision (b) of Section 1801 of the Probate Code and subdivision (b) of Section 39 of the Civil Code.~~ *intestacy.*

(2) *Serve as a fiduciary on behalf of the decedent's estate or trust.*

~~(d)~~

(c) For purposes of this section, the following definitions shall apply:

(1) "Physical abuse" *has the same meaning* as defined in Section 15610.63 of the Welfare and Institutions Code.

(2) "Neglect" *has the same meaning* as defined in Section 15610.57 of the Welfare and Institutions Code.

~~(3) "False imprisonment" as defined in Section 368 of the Penal Code.~~

~~(4)~~

(3) "Financial abuse" *has the same meaning* as defined in Section 15610.30 of the Welfare and Institutions Code.

~~(e)~~

(d) Nothing in this section shall be construed to prohibit the severance and transfer of an action or proceeding to a separate civil action pursuant to Section 801.

1 ~~SECTION 1. Section 15657.4 is added to the Welfare and~~
2 ~~Institutions Code, to read:~~
3 ~~15657.4. The court shall notify the district attorney of the~~
4 ~~relevant jurisdiction of a civil judgment or settlement based on a~~
5 ~~violation of any state elder financial abuse law.~~

O